

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMILIO RODRIGUEZ-GUTIERREZ,

Defendant - Appellant.

No. 05-10551

D.C. No. CR-05-00359-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted August 21, 2006**

Before: GOODWIN, REINHARDT and BEA, Circuit Judges.

Emilio Rodriguez-Gutierrez appeals from the district court's judgment and 71-month sentence following his guilty-plea conviction for illegal re-entry after deportation in violation of 8 U.S.C. § 1326(a), as enhanced by (b)(2).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Rodriguez-Gutierrez has filed a brief stating that there are no grounds for relief, and a motion to withdraw as counsel of record. Rodriguez-Gutierrez has not filed a pro se supplemental brief, and the government has not filed an answering brief.

We have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988), and we dismiss in light of the valid appeal waiver, *see United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered into knowingly and voluntarily).

Appellant's motion to supplement the record with the plea agreement is **GRANTED**.

Counsel's motion to withdraw is **GRANTED**, and this appeal is **DISMISSED**.